

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

NICOLE COLEY

Plaintiff,

v.

KATHY L. RUMER, D.O., F.A.C.O.S;
DELAWARE VALLEY AESTHETICS, PLLC
D/B/A RUMER COSMETIC SURGERY

Defendants.

CIVIL ACTION NO. 2:18-cv-01188

**MOTION OF KATHY L. RUMER, D.O., F.A.C.O.S. AND
DELAWARE VALLEY AESTHETICS, PLLC D/B/A RUMER COSMETIC SURGERY
TO DISMISS WITH PREJUDICE PORTIONS OF PLAINTIFF'S COMPLAINT
PURSUANT TO FEDERAL RULE OF CIVIL PROCEDURE 12(b)(6)**

Defendants, Kathy L. Rumer D.O., F.A.C.O.S. and Delaware Valley Aesthetics, PLLC d/b/a Rumer Cosmetic Surgery, by and through their attorneys, German, Gallagher & Murtagh, P.C., and pursuant to Federal Rule of Civil Procedure 12(b)(6), respectfully moves this Honorable Court to dismiss with prejudice the following: Plaintiff's claims of Negligent Infliction of Emotional Distress; Plaintiff's claims of Intentional Infliction of Emotional Distress; Plaintiff's claims of recklessness; Plaintiff's demand for Punitive Damages; and Plaintiff's demand for attorney's fees. In support thereof, defendant states as follows:

1. On March 20, 2018, Plaintiff, Nicole Coley instituted this action by civil Complaint sounding in medical professional negligence under Pennsylvania substantive law. A copy of Plaintiff's Complaint is attached hereto and marked as Exhibit "A".

2. The Complaint was served on Defendants on or about May 9, 2018.

3. Plaintiff alleges that prior to and on March 23, 2016, plaintiff was suffering from gender dysphoria, male to female. (Ex. A at para. 19.)

4. Plaintiff further alleges that she underwent hormone therapy, counseling and completed all preoperative guidelines in preparation for gender reassignment surgery to be performed by Defendant, Dr. Rumer. (Ex. A at para. 21.)

5. On March 23, 2016 Defendant, Dr. Rumer performed a penile inversion vaginoplasty, local skin graft and related surgical procedures upon plaintiff at Delaware County Memorial Hospital. (Ex. A at para. 23.)

6. Plaintiff contends that despite her adherence to postoperative care, and as a direct result of the alleged negligence of the defendants in the performance of the penile inversion vaginoplasty, she suffered a urethral stricture and misalignment, loss of actual cavity, protruding proboscis which occurs during arousal, labia scar tissue and clitoral insensitivity, in addition to infection and her inability to engage in sexual intercourse, as well as severe psychological trauma and gender dysphoria. (Ex. A at para. 27.)

7. Defendants deny any and all liability for the allegations contained in Plaintiff's Complaint.

8. As more fully explained in the accompanying Memorandum of Law, and Pursuant to Federal Rule of Civil Procedure 12(b)(6), Defendants respectfully move this Honorable Court to dismiss with prejudice: Plaintiff's claims of Negligent Infliction of Emotional Distress; Plaintiff's claims of Intentional Infliction of Emotional Distress; Plaintiff's claims of recklessness; Plaintiff's demand for Punitive Damages; and Plaintiff's demand for attorney's fees.

WHEREFORE, for the foregoing reasons, and for the reasons set forth in the attached Memorandum of Law, Dr. Rumer and Rumer Cosmetic Surgery respectfully request that this Honorable Court enter an Order Granting Defendants' Motion in accordance with the attached proposed Order.

Respectfully submitted,

GERMAN, GALLAGHER & MURTAGH

BY: 

John P. Shusted

Chilton G. Goebel, III

Lauren A. Green

Attorneys for Defendants

Kathy L. Rumer, D.O., F.A.C.O.S and

Delaware Valley Aesthetics, PLLC

d/b/a Rumer Cosmetic Surgery